



Virginia  
Regulatory  
Town Hall

## Emergency Regulation Agency Background Document

<b>Agency Name:</b>	Dept. of Medical Assistance Services (DMAS); 12 VAC 30
<b>VAC Chapter Number:</b>	12 VAC 30, Chapter 120
<b>Regulation Title:</b>	MEDALLION
<b>Action Title:</b>	Changes from BBA
<b>Date:</b>	

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

### Emergency Preamble

*Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).*

*Please include a brief summary of the emergency action. There is no need to state each provision or amendment.*

This regulatory action qualifies as an emergency, pursuant to the authority of the *Code of Virginia*, 1950 as amended, § 2.2-4011, because it is responding to a mandate in the 2003 Virginia Appropriations Act (Item 325 R) that the Virginia MEDALLION programs conform to the federal Balanced Budget Act of 1997 (BBA) within 280 days from the date of the enactment of the Appropriations Act. This regulatory action is not otherwise exempt under the provisions of the *Code* § 2.2-4006. This regulatory change is spurred by the BBA, found in the Code of Federal Regulations (CFR), specifically 42 CFR §§ 438.700-704. While the BBA became law six years ago, the states are not required to comply with these requirements until August 2003. A final exempt regulation preceded the present emergency package, but this section was not included. The current regulatory change augments the provider sanctions section of 12 VAC 30-120-350 to include the stiffer penalties provided for under the BBA.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.*

*Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.*

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The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements.

The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

## Substance

*Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

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The regulation affected by this action is 12 VAC 30-120-350: PCP remedies for violation, breach, or nonperformance of provider terms and addendum.

42 CFR §§ 438.700-704 set forth specific intermediate sanctions that may be imposed on PCPs for certain acts or omissions specified in the regulations. These sanctions include: additional civil money penalties with specific limits set out in 42 CFR § 438.704, giving the PCP's enrollees the right to disenroll; suspension of the PCP's right to enroll new patients, and suspension of payments to the PCP. These new sanctions are in addition to those that may currently be imposed by the State.

## Alternatives

*Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.*

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The only alternatives available to DMAS under the BBA were either to limit or to forego completely the additional sanctions provided for in 42 CFR § 438.700-704. DMAS elected to include all the sanctions available under the BBA in order to have the maximum authority available to protect Medicaid recipients through these sanctions.

## Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

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This change does not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.